

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on January 11, 2001 at 9:09 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Duane Grimes, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Anne Felstet, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 6, SB 7, 1/5/2001  
Executive Action: SB 4, SB 63

**EXECUTIVE ACTION ON SB 4**

**Motion:** SEN. GRIMES moved the amendments to SB 4.

**Discussion:**

SEN. DUANE GRIMES opened discussion with the amendments drafted between Mr. Leroy Schram, Montana University System, and Jim Nys, Society for Human Resources, EXHIBIT(jus08a01), EXHIBIT(jus08a02).

SEN. GRIMES said the bill created some problems because by deleting entirely the 'at-will' section of the law, employers were left vulnerable if they didn't have an established probationary period. A good example of this was farmers and ranchers. If they did not have a formal probationary period, and the at will clause was eliminated, those employees would become permanent employees from the day they started. Therefore, the amendments created a presumptive probationary period. So farmers and ranchers, or any small employer who did not have a probationary period, would automatically be granted a one year presumptive probationary period. The amendments also encompass the Whidden vs. Nerison Supreme Court case regarding at-will employment. With the amendments, SB 4 applied the Whidden decision to retain at will employment for probationary period employees, even for smaller employers without a formalized probationary period. The amendments also clarified the last sentence, especially in light of temporary employees working for temporary service agencies.

CHAIRMAN LORENTS GROSFIELD said Valencia Lane, Legislative Staffer, would have to draft the amendments, but in the meantime, the committee could discuss them. Executive Action would have to wait for the official draft of the amendments.

SEN. JERRY O'NEIL asked if the amendment removed at-will employment from the employers in Montana, or if it continued it for a year instead of six months.

SEN. GRIMES told him it still repealed the at-will section that was in the code, however, it did not repeal a current right that employers thought they had for at will employment. SEN. GRIMES explained employers gave up that right in 1987 for permanent employees by adopting the Wrongful Discharge Act in exchange for not being sued. Currently, there was not such a thing as at-will employment in the state of Montana for permanent employees.

SEN. O'NEIL then asked the purpose of the bill.

**SEN. GRIMES** replied SB 4 implemented the decision handed down in the Whidden vs. Nerison court case in which the Supreme Court said the at-will employment section was impliedly repealed. Therefore, SB 4 acknowledged that case but said, at-will employment wasn't impliedly repealed, but was left in place for probationary employees. However, it understood that employers in Montana could get themselves into trouble by mis-applying that at-will section. So, SB 4 removed at-will employment but continued the current practice of at-will employment for probationary employees. The amendments took it one step further by adding a presumptive probationary period; just in case some small employer--farmer, rancher, business man--did not specifically have a structured probationary policy in effect.

**SEN. GRIMES** summed it up saying SB 4 implemented the Whidden decision and made it a little more secure in the case of probationary employees.

**SEN. STEVE DOHERTY** thought a presumption of a probationary period would be extremely helpful to both sides and would be fair, but thought a year was probably too long. He suggested 90 or 180 days, but didn't know which was better.

**SEN. GRIMES** replied that the time frame was amendable and that the bill did not prevent employers from establishing their own time frame. He thought 90 days was far too short for a number of reasons, but was amenable to six months.

**SEN. MIKE HALLIGAN** offered that he had to extend someone's probation. He suggested six months as the presumption, however, there could be an ability to extend it. In his case, he had to do some paperwork to make sure people understood what was going on.

**SEN. GRIMES** cautioned that the idea of six months plus the extension was good, but it would be something new in law. He acknowledged there was some case history, but state government, in particular, could cause trouble, especially unionized employees.

**CHAIRMAN GROSFIELD** questioned the need for an extension because the amendments seemed to say an employer could determine the time frame.

**SEN. GRIMES** answered there was nothing that prohibited somebody from establishing six months or even less on a probationary period. The language did not preclude that. He felt the committee should set the time frame and stay away from extensions.

**SEN. O'NEIL** commented that in order to protect the small employer, the one year probationary period should be kept.

**CHAIRMAN GROSFIELD** reiterated if it was put at a year an employer could put it at six months or nine months, but that still didn't take care of the extension issue that came up. He sensed that the committee agreed with establishing a probationary period and suggested they discuss the time frame to provide Valencia a specific time.

**SEN. DOHERTY** questioned the fairness of extensions to the probationary period. He felt it altered the terms of the original agreement.

**SEN. HALLIGAN** respectfully disagreed. He said the way the state policies operated, the probationary period could be extended for whatever reasons. He said it took work, but was absolutely critical that it be done.

**SEN. DOHERTY** countered that was for the state who had several personnel people, a well established manual, and a well established policy. But this went beyond state people, it affected the small non-profit agency who hired an executive director and one employee, or the small business who had one main revenue generator and one employee, who may not have had a personnel policy or personnel director.

**SEN. GRIMES** said the discussion revealed that different employers had different time frame needs.

**SEN. WALT McNUTT** presented a different reason for a one year probationary period. He suggested some latitude might be what the bill needed.

**SEN. O'NEIL** pointed out that the committee was setting the default and many small employers would use whatever was established.

**CHAIRMAN GROSFIELD** asked **Ms. Lane** if, other than the time line, the amendments looked like they would work?

**VALENCIA LANE, Legislative Staffer**, said yes.

**CHAIRMAN GROSFIELD** asked if the committee wanted to advise **Valencia** as to a time frame.

**SEN. GRIMES** suggested the draft use 12 months.

**CHAIRMAN GROSFIELD** closed discussion on SB 4.

**EXECUTIVE ACTION ON SB 63**

**CHAIRMAN LORENTS GROSFIELD** brought SB 63 with its amendments, **EXHIBIT(jus08a03)**, to the table.

*{Tape : 1; Side : B}*

**Valencia Lane, Legislative Staff**, suggested the committee look at the marked-up bill rather than the amendments. She said the amendments were requested by **SEN. HALLIGAN** and he requested two changes. The rest of the changes were put in based on her understanding of what the bill was supposed to say. However, **Riley Johnson** thought she had misunderstood them. She had based her understanding on the \$1,000 threshold between a misdemeanor and a felony violation. For example, if a person rented something above the cost of \$20,000 and returned it, but only owed one day's rental return of \$250, then the person owed the rental amount. She clarified the bill to say if the amount owed was under \$1,000, it was a misdemeanor versus if it was over \$1,000. **Riley Johnson** said the intention was if a \$20,000 machine was rented, returned, and a rental fee of \$250 was still owed, they wanted it to be a felony. She pointed out that this was a policy decision the committee had to make. She consulted with **Greg Petesch** and he concurred with her understanding of the situation: that the amount actually owed should determine whether the charge was for a felony or misdemeanor. She said that it was apparently not what the requesters of the bill wanted.

**Motion:** **SEN. HALLIGAN** moved the **AMENDMENTS TO SB 63**.

**Discussion:**

**SEN. MIKE HALLIGAN** said he tried to be consistent with the intent of the bill.

**RILEY JOHNSON, Northern Rocky Rentals Association**, addressed the amendments. He concurred that on amendment 9, **Ms. Lane** was correct: if the machine was a \$20,000 bobcat and the amount owed was \$250, or \$500, then the bobcat was returned, but the fee was not paid, then it would not be a felony charge. He proceeded to amendment 10 that stated if the amount owed was over \$1,000, then it became a felony. He accepted the amendments and restated their intent: the value of the product and the value of the rent owed must exceed \$1,000. The exact same thing was in effect for less than \$1,000 for the lessor penalty.

**Ms. Lane** explained they tied the \$1,000 threshold to the value of the equipment. The \$1,000 threshold applied to what was owed if it was not paid to what the machine cost if it was not returned.

**CHAIRMAN GROSFIELD** clarified that the \$1,000 threshold was the threshold for a felony.

**SEN. HALLIGAN** confirmed that.

**SEN. DUANE GRIMES** questioned if the costs associated with late returns or returns made to another location that required the company to then reclaim the property would also be included in the bill.

**CHAIRMAN GROSFIELD** said he didn't see that opportunity cost were included.

**SEN. HALLIGAN** said those charges would be subject to the contract. For example, the contract would state x amount to rent, and if it was not returned, x amount would be charged per day. He said more than likely those extra charges and penalties would be in the contract.

**SEN. JERRY O'NEIL** said this was an excellent bill with or without the amendment because it established a debtors prison. He was willing to vote for it, but wanted assurance that next year when the same agreement arose for paralegal services, it would be accepted too. Otherwise, he wanted a substitute motion to kill the bill.

**CHAIRMAN GROSFIELD** replied that several legislators would not be around next session. So, it would be hard to tell what the next Legislature would do.

**SEN. HALLIGAN** corrected **SEN. O'NEIL** saying a judge could not order a fine if someone did not have the ability to pay it. Therefore, a debtors prison could not be created because if someone couldn't pay it, judges couldn't order it. Under the normal penalty statutes, they could order community service, or tell the person to help the company. He pointed out that this was no more than a lot of other areas involving criminal penalties in the criminal law statutes for failure to return property.

**SEN. O'NEIL** agreed with **SEN. HALLIGAN** that a judge could not impose a fine for somebody that didn't have the ability to pay for it. But in this bill, the judge didn't have to impose a fine. He could put them into prison for up to 10 years for failing to pay rental on a piece of equipment. He said that sounded like debtors prison.

**CHAIRMAN GROSFIELD** interjected asking if videos and that sort of thing would be included. He suggested dealing with the amendment first.

**SEN. STEVE DOHERTY** presented an example of renting a power sprayer/power painter which had a value less than \$1,000. The equipment was kept for a week then returned and the amount owed was \$500. However, the amount paid was only \$100. He said according to section 4 on page 2: the renter could be fined \$1,000 or put in jail for six months. He asked for clarification: if the entire rental payment of \$500 was not paid, only \$100 was, that the renter could go to jail.

**Ms. Lane** said yes, unless there was an exception for video rentals.

**SEN. DOHERTY** followed up on that with an example. A person rented 10 videos, nine were returned. The tenth one was discover to have slipped behind the couch for the last two months. The person owed \$75 and asked for a deal. The shop keeper said no, they wanted the \$75. Would that subject the person to a \$1,000 fine or six months in jail?

**SEN. HALLIGAN** said county attorneys would not file anything on the misdemeanor stuff, they'd defer the person to small claims court where a judgement against the renter for \$75 would happen and the person's wages would be garnished. He said that could happen without this bill.

**SEN. O'NEIL** inquired if the committee was willing to construct laws on the presumption, or on good faith that the judges would not impose a burden of the laws.

**SEN. HALLIGAN** argued that the misdemeanor offense was generally in the statutes for everything in cases of the outrageous offender who could possibly warrant the more serious charge.

**SEN. O'NEIL** asked if other bills existed that enabled a retail merchant to put a person in jail or prison for failure to pay a bill.

**SEN. HALLIGAN** responded that they were all over the statutes. The person had to go to the county attorney's office to present their case, or get a sheriff involved if they wanted to do that. The county attorney had the discretion to charge or not. If county attorneys wanted to be proactive on this, they potentially could put people in jail. However, the prisons and jails were full with serious offenders.

**CHAIRMAN GROSFIELD** pointed out that they were arguing current law. This bill extended that law to not only the value of the item rented, but to the value of the rental itself.

**SEN. O'NEIL** said he had no problem saying a person stole property if they didn't return it. However, he objected because this bill seemed to be saying if a person didn't pay the full amount of the rent on this item, then they were stealing it. He argued that was the first time he had known that failure to pay rent or for services, signified stealing and subsequent jail time. He warned against giving the court the power to put somebody in jail for failure to pay rent or services because they didn't have enough money to pay for it.

**CHAIRMAN GROSFIELD** said that was the policy question the committee had to decide.

**Vote:** Motion that **SB 63 AMENDMENT BE ADOPTED** carried 8-1 with O'Neil voting no.

**Motion:** **SEN. MCNUTT** moved that **SB 63 DO PASS AS AMENDED.**

**Discussion:**

**SEN. GRIMES** said video tapes were in the bill before and they didn't ask to be excluded.

**SEN. RIC HOLDEN** asked if it would make more sense to just have them go to small claims court rather than convicting people of stealing stuff they hadn't stolen, they just hadn't paid the entire bill.

**SEN. HALLIGAN** agreed that the entities would probably say that was a pretty effective way of doing things. However, the bill requesters evidently were having trouble and needed the hammer of the state's criminal threat of prosecution to try to get property back. The Legislature had done this before; working with businesses to say: we'll put in statute that it will be a criminal violation if people don't do X, X, and X. He conceded that people could use small claims court. But in many cases, the maximum was \$10,000.

**SEN. HOLDEN** told the committee to think of all the services that people provided: attorneys provided services, insurance companies for charging a premium. He felt they would be setting wrong public policy to say that because a person wasn't paying the entire amount of the bill they would actually be stealing either services, maybe sometime in the future, with future legislation, or in this case tangible pieces of property.



**SEN. HALLIGAN** argued the only reason they were involved was because at some point it reached the level of a theft. That was why criminal prosecution could potentially come in. If a person deliberately and intentionally, purposely, and knowingly did not return property after the time frame, then at some point, that became unauthorized use of another's property and it was a theft against public society, not just the business.

**SEN. HOLDEN** said that in this case, they were talking about property that was returned, could be returned, but not paid for in full. He wanted to know if the theft standard would still apply.

**Substitute Motion/Vote:** **SEN. O'NEIL** made a substitute motion that **SB 63 BE TABLED.**

**Discussion:** None **Substitute motion failed 4-5 with SEN. BISHOP, SEN. HOLDEN, SEN. O'NEIL, and SEN. PEASE voting aye.**

**Vote:** Motion that **SB 63 DO PASS AS AMENDED** carried 6-3 with **SEN. BISHOP, SEN. HOLDEN, and SEN. O'NEIL** voting no.

*{Tape : 2; Side : A}*

#### HEARING ON SB 6

**Sponsor:** **SEN. MACK COLE, SD 4, HYSHAM**

**Proponents:** **REP. DAN MCGEE, HD 21, member of the Eminent Domain study committee**  
**REP. MONICA LINDEEN, HD 7, member of the Environmental Quality Council in the interim and the Eminent Domain study committee**  
**Clint McRae, member and spokesman of Northern Plains Resource Council and V.P. of Rocker Six Cattle Company of Forsyth**  
**Tom Ebzery, Qwest**  
**Julia Page, small business in Gardner. Member of the Northern Plains Resource Council, public member of the environmental quality council**  
**Dan Teigen, farmer and rancher in the town of Teigen**  
**Don Allen, Western Environmental Trade Association**  
**Steve Gilbert,**  
**Gail Abercrombie, Executive Director of the MT Petroleum Association**  
**Lorna Karn, MT Farm Bureau Federation**  
**Jeff Barber, Clark Fork Coalition**

**Geoff Feiss, General Manager of the MT  
Telecommunications Association**

**Opponents:**       None

**Opening Statement by Sponsor:**

**SEN. MACK COLE, SD 4, HYSHAM**, opened on SB 6 and distributed a booklet on Eminent Domain in Montana, **EXHIBIT(jus08a04)**. He explained that a study committee had been meeting since the last session regarding Eminent Domain. Speaker of the House, Dan McGee was one of the members of that committee. They held a number of open and informational meetings. Public meetings were held in Billings, Libby, Missoula, and Helena. The hearings were well attended and the press covered it as well. From the meetings, the committee developed a handbook. He proceeded to point out some highlights of the booklet: page 1, premise of Eminent Domain; page 3, Fifth Amendment; page 4 and 5, public uses determined by the Legislature; page 7, easement information; page 8, "what facts must be found before condemnation can occur". He said Eminent Domain was not used a lot, but it was a way in which the person being condemned received just compensation if they couldn't come to an agreement by negotiations. He stated that four bills pertained to Eminent Domain; two were heard in House yesterday and two would be heard in the Senate today. The purpose of SB 6 was to state specifically in the Eminent Domain statutes that the land owner was not liable except for instance of negligence or intentional conduct. The bill also provided for attorney fees for property owners who were made a party to an action, but were found not liable for damages. This bill simply limited and clarified; it didn't in any way change the current laws. He summed it up saying SB 6 clarified the laws regarding an easement, so that a landowner would not be liable for any damages unless it was through negligence or the person intentionally did something.

**Proponents' Testimony:**

**REP. DAN MCGEE, HD 21, member of the Eminent Domain study committee**, said in general, the committee found that the Eminent Domain statutes were located in 12 different titles of Montana law. SB 7 attempted to deal with that and clean up discrepancies and idiosyncracies of the Eminent Domain statutes throughout code. SB 6 tried to address a situation that could exist where properties were taken and the property owner was held liable for damages for no other reason than he/she had an interest in the land. He said it appeared in Montana law that a person would not be held liable for actions that the person did not take, but it was not clear. He brought attention to two counterposing rights

that SB 6 tried to balance: 1) right of individual to own, use land. 2) Eminent Domain; the right of the state to take land for some public use. He said that many of the Eminent Domain laws were written during the time of monopolies, but that today many different factors and entities had the power of Eminent Domain. Therefore, SB 6 tried to balance the rights of the individual land owner with the right of the state to use a condemnation process. This bill tried to define that the land owner was not liable for actions he/she did not take on lands that had been taken through a condemnation act. It also provided for attorneys fees if the landowner was named in joint, and held the landowner harmless.

**REP. MONICA LINDEEN, HD 7, member of the Environmental Quality Council in the interim and the Eminent Domain study committee,** restated that there were four bills recommended from the committee. She was sponsoring one of them on the House side, HB 22. She reiterated that SB 6 tried to balance the rights of Eminent Domain with personal property owners' rights. She said it was important to protect personal property rights while at the same time retaining Eminent Domain for the purpose of the public good.

**Clint McRae, member and spokesman of Northern Plains Resource Council and V.P. of Rocker Six Cattle Company of Forsyth,** said the NPRC consisted of farmers, ranchers, and townspeople in Eastern and South Central Montana who were concerned about agricultural issues and natural resource use. He confessed that the NPRC did not always agree with the Legislature on natural resource policy, but the Eminent Domain bills were areas everyone could agree with that landowners property rights should be protected. He noted that agriculture was Montana's #1 industry. He said the Department of Ag reported the industry generated \$2 billion in Montana. He said with all of the talk about economic development this year, that one of the best ways to promote the #1 industry was to protect the private property rights of farmers and ranchers. He reported he had been actively involved with the Environmental Quality Council subcommittee on Eminent Domain for the past year, and SB 6 would clear up a question he had had regarding the liable party on easement land.

**Tom Ebzery, attorney for Qwest,** said he was a public member of the Environmental Quality Council and served on the subcommittee. He stated that the four bills on Eminent Domain had consensus, but that when the committee first started, there was no consensus. He also praised the Eminent Domain manual.

**Julia Page, small business in Gardner,** indicated she was a member of the Northern Plains Resource Council, and a public member of

the Environmental Quality Council. She described the subcommittee when it first met as two camps lobbing bombs: 1) said the law was just fine and didn't need any changes. 2) consisted primarily of those people who had been condemned or were threatened with projects on their property and thought many changes needed to be made. She said dialog didn't begin until they looked at the specific issues and people accepted that no one was trying to get rid of the right of Eminent Domain. She noted the right was an inherent right on par with the ability to tax. She said the existing laws didn't authorize Eminent Domain they basically limited the powers of the state and guided them so that private property owners and citizens were protected from the power of the law. She concluded saying, SB 6, which gave landowners much more explicit protection for liability for projects on condemned property was one of the specific issues that people raised in the public hearings; for them to feel adequately protected when the law was exercised.

**Dan Teigen, farmer and rancher in the town of Teigen,** asked for support on alleviating landowner liability on condemned land. He argued that if tourism surpassed agriculture as the state's largest industry, ag would still be more important because everyone needed to eat. He said working in an industry where he lost money, he took very seriously anything, large or small, that could hinder his ability to avoid bankruptcy. He said the impositions and liabilities placed on a family ranch by property condemnation through Eminent Domain were large, small, and very real. He was pleased to see that this issue was being addressed. He noted his family's history of land condemnation covered the spectrum: from railway to highway, power, telephone, and fiberoptic lines. These created additional fencing, altered irrigation ditches, altered runoff, disrupted movement of livestock between pastures, increased danger to drivers, animals, and especially now with the impending liability to landowners given the recent decision by the Supreme Court pertaining to open range status and sudden livestock vehicle rendezvous. He acknowledged the tradeoffs and benefits to this "progress", and up to a reasonable point, if a ranch had to sacrifice a few hundred acres of prime land for a justified overall betterment of community, so be it. However, he did think refurbishing the Eminent Domain laws were long overdue; particularly regarding the proper placement of liability responsibility and accountability.

**Don Allen, Western Environmental Trade Association,** noted the membership included many of the entities that provided the services and goods to people of the state. He also participated in the subcommittees activities so he knew this bill had consensus. It clarified the law that needed to be clarified.

**{Tape : 2; Side : B}**

**Steve Gilbert, representing self**, supported SB 6 because it was created in a by-partisan way. He said anytime there was a situation through law where property could be condemned, the landowner needed to be protected from further damages related to liability.

**Gail Abercrombie, Executive Director of the MT Petroleum Association**, said members of the Petroleum Association were involved throughout the Eminent Domain study. They realized there was a discrepancy between what happened in reality and clean-up of a spill on an easement from a pipeline. She said the company must clean those up, but there wasn't distinct clarification for the landowners' comfort that that was the case, until now.

**Lorna Karn, Montana Farm Bureau Federation**, said the handbook from the committee was an excellent guide for landowners and others interested in Eminent Domain. She reiterated that SB 6 clarified landowners rights. She said the federation felt there was a big misunderstanding with Eminent Domain throughout the state. This clarified that and helped the farmers and ranchers know just exactly what their rights were.

**Jeff Barber, Clark Fork Coalition**, told that the coalition represented citizen scientists, business people, and recreationists dedicated to protecting and restoring water quality throughout Clark Fork River Basin. He said they were interested in the bill because of some proposed and scrapped re-routing of the Yellowstone Pipeline. The coalition participated in the Environmental Quality Council process and supported the bill.

**Geoff Feiss, General Manager of the Montana Telecommunications Association**, wanted to join the line of supporters because when people saw the list of supporters and knew where they were coming from, it was a commendable and exemplary process.

**Opponents' Testimony:**

**None**

**Questions from Committee Members and Responses:**

**SEN. AL BISHOP** asked if a landowner wasn't negligent, would he be liable for anything under existing law. **Tom Ebzery, Qwest**, said no.

**SEN. BISHOP** then asked if the existing negligence law would do the exact thing that this bill proposed to do except for the attorney fee. **Mr. Ebzery** said yes.

**SEN. BISHOP** clarified that SB 6 just restated law that was already in some other section of the code. **Mr. Ebzery** agreed. However, he pointed out that there was a lot of confusion about the liability on the laws because current law wasn't clear regarding ordinary negligence and gross and willful negligence.

**SEN. JERRY O'NEIL** questioned a property owners ability to collect attorney fees for property adjacent to the condemned portion. **Mr. Ebzery** clarified that attorneys fees pertained to action within the easement area, not adjacent property.

**SEN. O'NEIL** asked where that could be found. **Mr. Ebzery** said this particular statute would apply to the property that one would take an easement in, and not limit it to adjacent property. That easement would be spelled out specifically by a legal description. He felt anything outside that legal description would not be eligible for attorneys fees.

**SEN. DUANE GRIMES** asked about negligent actions that took place under this law on an easement that somehow was related to the use of a project. Did this protect landowners from their negligent actions, even though it occurred on those easements? **Mr. Ebzery** clarified the difference between ordinary negligence and gross and willful. He presented the instance of a backhoe with a pipeline. If a landowner used a backhoe and ruptured the pipeline, would that be ordinary negligence or wanton and willful? The bill talked about ordinary negligence and not some willful act.

**SEN. STEVE DOHERTY** inquired about the other Eminent Domain bills.

**CHAIRMAN LORENTS GROSFIELD** cautioned a brief answer because the other Senate bill would be heard next and he anticipated getting the House Bills as well.

**REP. DAN MCGEE** again stated four pieces of legislation came out of the committee: 1) SB 6 tried to make sure that a landowner who was not part of some problem that occurred on an easement that had been taken in a condemnation process was going to be, even if named in a suit, held harmless. There would be money to pay for attorneys fees. 2) SB 7 tried to take the Eminent Domain laws, spread throughout 12 different titles of code, and put it all into something meaningful. 3) HB 93 said that someone being condemned against, the condemnee, could provide an idea of the costs incurred to repair the damages. The Montana Constitution

stated: "private property shall not be taken or damaged for public use without just compensation to the full extend of the law." He said many times it appeared the compensation that would be paid dealt with the value of the land, but not necessarily with any measures that tried to deal with the damages, mitigation measures. 4) HB 22 went further on existing code stating that the final condemnation order specified the usages for a particular condemnation. The default taking would be an easement only, unless someone came along and proved otherwise. In the case of the highway department, they have to, because of federal funds, therefore, they were exempted in HB 22. He acknowledged the committee did not fix everything, but were able to clarify Eminent Domain and tried to balance the opposing rights.

**Closing by Sponsor:**

**SEN. COLE closed on SB 6.** He said the bill clarified things and retained existing law.

**HEARING ON SB 7**

**Sponsor:** SEN. MACK COLE, SD 4, HYSHAM

**Proponents:** REP. DAN MCGEE, HD 21, member of the Eminent Domain study committee  
REP. MONICA LINDEEN, HD 7, member of the Environmental Quality Council in the interim and the Eminent Domain study committee  
Tom Ebzery, attorney for Qwest  
Clint McRae, member and spokesman of Northern Plains Resource Council and V.P. of Rocker Six Cattle Company of Forsyth  
Julia Page, small business in Gardner. Member of the Northern Plains Resource Council, public member of the Environmental Quality Council  
Dan Teigen, farmer and rancher in the town of Teigen  
Lorna Karn, MT Farm Bureaus Association  
Steve Gilbert, representing himself  
Steve Wade, Burlington Northern Santa Fe Railroad

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. MACK COLE, SD 4, HYSHAM,** opened on SB 7. He pointed out that this bill was much larger than SB 6. It reflected the more

important work of the subcommittee. The original Eminent Domain laws were written in the late 1800's. The language and style had not changed an appreciable amount. One of the goals of the subcommittee was to make the Eminent Domain laws more understandable. Therefore, SB 7 cleaned up the language of Eminent Domain statutes to current draft bill standards. It also served another purpose. The Eminent Domain laws were housed in basically one location, Title 70, Chapter 30. However, the authority to exercise the right of Eminent Domain was granted to various entities throughout the code. SB 7 referenced each area throughout the code where Eminent Domain authority was granted.

**Proponents' Testimony:**

**REP. DAN MCGEE, HD 21, member of the Eminent Domain study committee,** said it became clear early on that the Eminent Domain statutes were confusing, chaotic, and were located throughout code. So, the first thing the subcommittee did was construct a 'clean-up bill' to put all the issues of Eminent Domain in one place in code and reference where ever else it may be in code. The bill was straight forward; there were no substantive changes.

**REP. MONICA LINDEEN, HD 7, member of the Environmental Quality Council in the interim and the Eminent Domain study committee,** said she looked forward to bringing over the House Bills on the subject.

**Tom Ebzery, attorney in Billings representing Qwest,** said the statutes were antiquated and SB 7 brought them up to standards with the 21 century as far as drafting language was concerned.

**Clint McRae, Member and spokesman for the Northern Plains Resource Council and V.P. of Rocker 6 Cattle Company of Forsyth,** pointed out that SB 7 was a bi-partisan agreement; one of the few times that industry and landowners sat down to hammer out an agreement on the same side of an issue.

**Julia Page, business owner from Gardner, member of the Northern Plains Resource Council, member of the Environmental Quality Council, and member of the Eminent Domain subcommittee,** said the committee found that Eminent Domain was used quite a bit in Montana, although very few cases actually went to court any given year. Sometimes people were able to reach satisfactory negotiation, but not always, then they had to go to the actual condemnation which utilized the rules set out in the Eminent Domain law. Not only did landowners come up and say that projects had come up and through their property, but various communications, pipeline, transportation, railroad, highways, different industries said they use it a lot as well. They



usually didn't have to go to condemnation, but the power to utilize Eminent Domain was with them every time they negotiated. This bill helped put all the authorized public purposes into one piece of statute, and this bill was useful as an aid to make the law more clear.

***{Tape : 3; Side : A; Comments : Tape change in middle of Julia Page's testimony. }***

**Dan Teigen, farmer and rancher in the town of Teigen,** said SB 7 helped clarify and better present guidelines for Eminent Domain as used by various entities and used on private land across Montana. He felt his family's experience with condemnation could have been much less negative had a bill like this been introduced long ago. For the future, his experience with Eminent Domain could be better.

**Lorna Karn, Montana Farm Bureau Federation,** supported SB 7.

**Steve Gilbert, representing himself,** said the bill consolidated and clarified a law on the records of Montana that was 100 years overdue.

**Steve Wade, attorney on behalf of Burlington Northern Santa Fe Railway,** said when the study began, there was a lot of confusion and questions because the Eminent Domain statutes were so scattered throughout the code. So, he supported anything that provided clarification to allow people to better understand the process.

**Opponents' Testimony:**

**None**

**Questions from Committee Members and Responses:**

**SEN. MIKE HALLIGAN** asked if the list in section 52, could be consolidated for simplicity. **Krista Lee-Evans, Legislative Services Division staff,** said the legislature was the sole entity that determined what public uses, Eminent Domain, could be used for. Historically, in the court, if a public use was listed on this list, they didn't touch it. What they determine was whether or not the particular portion of property that was in the court case was necessary for that particular project or for that public use. She said the public uses section was cross-referenced back and forth so a person could find all the public uses for which Eminent Domain could be exercised.

**SEN. HALLIGAN** asked why they kept in telegraph lines since they were going through and updating the bill. **Ms. Lee-Evans** replied the subcommittee chose not to change any of the public uses and not to add any additional ones other than to cross-reference. They chose to leave it in because of court precedent and court cases which used telegraph and from that to telephone, and from that to telecommunications.

**SEN. HALLIGAN** redirected and asked if there was any need to modernize that language. **Tom Ebzery, attorney for Qwest**, said telegraph was used in the most recent Supreme Court decision, and that was fairly all inclusive of the telecommunications era. However, if terms changed then they would come to the legislature later and ask for a broader definition. For now, the definition of telecommunications and telegraph was broad enough to include internet and the various uses in the high-tech revolution.

**SEN. HALLIGAN** suggested not to wait for that, but to maybe put in a new telecommunications definition now. **Mr. Ebzery** said the latest case was fairly definitive, and deemed broad enough, so that this bill was not the proper place to make a change like that. The subcommittee just did not feel like they had a definition they could agree on other than the Supreme Court definition and what was in existing law.

**SEN. STEVE DOHERTY** pointed out several troublesome instances where land could be condemned. **Rep. Dan McGee** replied that it was already statute. SB 7 merely combined all the statutes from all over the code and it was not the tool to deal with those issues. SB 7 was not intended to be a policy bill, but simply a table of contents; there was nothing substantive. Part of the agreement in doing this particular bill, was that there would be nothing substantive. He agreed the issues should be looked at, but that wasn't the object of the bill.

**Closing by Sponsor:**

**SEN. COLE closed on SB 7** acknowledging that many of the things that **SEN. DOHERTY** brought up, the committee did discuss, and felt that this wasn't the place to put them. He said other issues arose from the subcommittee and if there was not a consensus, then comments could be made by those who had voted against the final recommendation. This was something that would be valuable for future hearings or if people were interested in more as far as what was done in the Eminent Domain subcommittee. He concluded by saying it was important that the Eminent Domain laws stayed in effect in such a way to be fair and equitable to both sides.

**EXECUTIVE ACTION ON SB 6**

**Motion:** SEN. HALLIGAN moved that **SB 6 DO PASS.**

**Discussion:**

**SEN. JERRY O'NEIL** suggested amendments for clarity.

**SEN. HALLIGAN** wanted to defer to a drafter. He **withdrew** the motion that **SB 6 DO PASS.**

**ADJOURNMENT**

Adjournment: 11:16 A.M.

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SEN. LORENTS GROSFIELD, Chairman

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ANNE FELSTET, Secretary

LG/AFCT

**EXHIBIT** (jus08aad)